IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE.

CRIMINAL APPEAL NO. 1056 OF 2004.

The Union of India. ..Appellant.

vs.

1. Devendra Manilal Mehta.
2. State of Maharashtra. ..Respondents.

Shri R.F. Lambay, P.P. for the Appellant-Union of India.
Shri Masood Khan for respondent No.1.
Shri A.S. Shitole, A.P.P. for the State.

CORAM: V.M. KANADE,J.
DATED: 4-2--2005.

P.C.

1. Heard learned P.P. for the Appellant- Union of India and learned Counsel appearing on behalf of respondent No.1.

2. The Union of India is challenging the judgment and order passed by the Chief Metropolitan Magistrate, Esplanade, Mumbai, in C.C. No. 595/C/93. By the said judgment and order dated 30.4.2004, the trial Court acquitted the accused of the offences punishable under section 135(1)(a), 135(1)(b) read with section 135 b(1)(i) of the Customs Act, 1962 and section 5 of the Imports and Exports (Control) Act, 1947 read with section 120-B of the Indian Penal Code and section 8 read with section 85 of the Gold (Control) Act, 1968.

3. The brief facts of the case are that on

29.1.1987, 83 gold bars valued at Rs. 39,27,889/-were found concealed in car No.MAM-281 parked in the compound of Parmanand Bhuvan at Navroji Lane, Ghatkopar, Mumbai. The said gold bars were confiscated and the accused were arrested and their statements were recorded under section 108 of the Customs Act. The department examined 10 witnesses in support of its case. The trial Court, however, acquitted the accused solely on the ground that the prosecution had failed to establish any link between the accused and the car carrying the contraband. The trial Court further came to the conclusion that the statements of the accused which were recorded under section 108 of the Customs Act were not voluntary statements and that they were obtained under coercion.

4. Shri Lambay, learned Counsel appearing on behalf of the appellant-Union of India has taken me through the judgment and order of the trial Court as also the notes of evidence of the witnesses which are examined by the prosecution. He has also taken me through the record and proceedings.

5. The learned Counsel appearing for the Union of India fairly conceded that there is no evidence to connect the accused with the gold bars which were concealed in the car. Learned Counsel appearing for respondent No.1-original accused has taken me through

various findings recorded by the trial Court. He has taken me through letters at Ex.D-1, dated 21.2.1987, 7.3.1987 and 25.7.1987, addressed to the Collector of Customs and others and the medical certificates submitted to the Chief Metropolitan Magistrate by the Chief Medical Officer, Mumbai, in which various injuries which were found on the person of the accused during the period when he was in custody have been noted. He submitted that in view of the said injuries it was absolutely clear that the statements which was recorded by the Customs Officer was under duress and they were not voluntarly given by the accused.

6. From the evidence on record, the admitted position which emerges is that the vehicle in question was parked in the compound of the building and gold bars have been seized from the said car. The trial Court has disbelieved the prosecution case that the accused were taken to Ghatkopar Police Station along with car. The record shows that the department did not produce register in the Ghatkopar Police Station in order to prove that the officers had taken car to Ghatkopar Police Station along with the accused. Further, panchanama which was prepared is produced at P-1, which does not inspire confidence as neither copy of the said panchanama was given to the accused nor their signatures were obtained on the said panchanama.

7. From the evidence of P.W.9-Bharat Brijlal Dholakia and P.W. 10-Jitendra Kantilal Shah it can be seen that the prosecution has not been able to establish the nexus between the accused and the car which was seized by the Customs Department. From their evidence on record, it can be seen that the car was initially booked by one Jitendra Shah, who subsequently gave letter of allotment to one Prakash Shah, who purchased the said car.

8. The Apex Court in the case of **Sevantilal Karsondas Modi vs. State of Maharashtra, 1999 (109) ELT (SC)** has held that confession of the accused which is retracted on complaint being made to the Medical Officer, who examined the accused and has certified that there were injuries on the person of the accused, such statements are under shadow of doubt and, therefore, reliance cannot be placed on such statements. The ratio of the above cited case is squarely applicable to the facts of the present case. The medical certificate clearly indicates that the accused had received injuries while they were in custody and complaint was made by the accused to the Court pursuant to which he was examined by the jail doctor, who certified that accused had received injuries on his person when he was examined on 2.2.1987. In the absence of any evidence to show that the car in which contraband was found was either owned

by the accused nor in their possession, benefit of doubt will have to be given to the accused.

9. The trial Court has given cogent reasons while coming to the conclusion that the Customs Department has failed to establish nexus between the accused and the car which was seized. In my view, there is no need to interfere with the said judgment and order of the trial Court, particularly when both the learned Counsel argued this appeal finally at the admission stage. After giving my anxious consideration to the arguments advanced by the learned Counsel on behalf of both the parties, I feel that the judgment and order is liable to be confirmed.

10. In the circumstances, leave is refused. Appeal is dismissed.